

MINUTES
Montana Fish, Wildlife & Parks Commission Meeting
Colonial Red Lion Hotel
Helena, MT

AUGUST 5, 2008

Commission Members Present: Steve Doherty, Chairman; Shane Colton, Vice-Chair; Dan Vermillion; Willie Doll; Vic Workman.

Fish, Wildlife & Parks Staff Present: Jeff Hagener, Director, and FWP Staff.

Guests: See August 5, 2008 Commission file folder for names of those who signed in.

Topics of Discussion:

- 1. Call to Order - Pledge of Allegiance**
- 2. Approval of Commission Meeting Minutes of July 17, 2008**
- 3. Approval of Commission Expenses through July, 2008**
- 4. Montana Outdoors Recognition**
- 5. 2009 Fishing Regulation Changes – Tentative**
- 6. Lower Big Hawk Lake Emergency Regulations - Final**
- 7. North Chamberlain Creek Easement in Powel and Missoula Counties – Endorsement**
- 8. Inghams/Foys Bend Property Acquisition on the Flathead River – Endorsement**
- 9. Old Harper's Bridge Fishing Access Site Acquisition near Missoula – Final**
- 10. Charlie Lincoln Ranch Acquisition – Update**
- 11. 2008 Early Season Migratory Bird Regulations – Final**
- 12. 2008 Late Season Waterfowl Seasons/Closure – Tentative**
- 13. Selection of Organizations to Auction Moose, Sheep, Goat, Deer & Elk Licenses – Final**
- 14. 2008 Bison Seasons, HDs and Quotas – Final**
- 15. 2008 Furbearer Seasons and Quotas – Final**
- 16. Cornwell Ranch Conservation Easement – Informational Update**
- 17. Wolf Management Administrative Rules and Annual Quotas – Final**
- 18. Open Microphone – Public Opportunity to Address Additional FWP Issues**

1. Opening - Pledge of Allegiance. Chairman Doherty called the meeting to order at 8:00 a.m. and led the Pledge of Allegiance.

2. Approval of July 17, 2008 Commission Meeting Minutes.

Action: Doll moved and Workman seconded the motion to approve the July 17, 2008 meeting minutes. Motion carried.

3. Approval of the July, 2008 Commission Expense Report.

Action: Colton moved and Workman seconded the motion to approve the July expense report as presented. Motion carried.

4. Montana Outdoors Recognition. Director Hagener explained that Montana Outdoors has been named the nation's best magazine for three out of the last four years, and subscriptions are at an all-time high. He acknowledged Tom Dickson, Luke Duran and Debbie Sternberg, and expressed appreciation for their work and dedication, and presented them with a plaque.

5. 2009 Fishing Regulation Changes – Tentative. Chris Hunter, FWP Fisheries Division Administrator, explained that major changes are made to the fishing regulations every four years, with clarifications, corrections, and any necessary conservation measures made in the years in between. The current four-year cycle runs from 2008 to 2011. Proposed changes include clarifications to regulations specific to the Yellowstone River and Clark Canyon, and conservation issues regarding bull trout waters and paddlefish. Following the 30-day public comment period, revisions will be made if necessary, and final proposed regulations will be presented to the Commission for approval at the October Commission meeting

Don Skaar, FWP Fisheries Division, briefed the Commission on the proposed 2009 regulations changes. He explained the rationale, which is also included in the following recommended changes.

New language is in italics. Deleted language has a strike through it.

WESTERN DISTRICT

CHANGE-(page 5) Bull Trout

Hungry Horse Reservoir, Lake Koocanusa and part of the South Fork Flathead River are open for a regulated and experimental bull trout angling season. When fishing for bull trout each angler must have in possession a valid Bull Trout Catch Card for the specific water he/she is fishing. *Anglers may select only one of the following areas: a) Lake Koocanusa or b) Hungry Horse Reservoir/South Fork Flathead River.*

Catch Cards are free of charge, but must be acquired by application from the FWP Region Office in Kalispell or online at www.fwp.mt.gov. Completed applications must be presented at the regional headquarters or mailed to FWP Bull Trout Permit, 490 North Meridian, Kalispell MT 59901. ~~Your 2007 Catch Card must be turned in to the Kalispell FWP office before you will be issued a 2008 Catch Card.~~

Rationale: The experimental bull trout fisheries are regulated under special permit from the US Fish and Wildlife Service since bull trout are listed as threatened under the Endangered Species Act. The permit requires follow-up surveys to track angler use and harvest. Nearly half the anglers sign up for both drainages but only a few percent actually fish both drainages. Requiring anglers to choose only one area would reduce workload and improve survey effectiveness. Support staff currently must issue separate permits/catch cards for Lake Koocanusa and Hungry Horse/South Fork, a time-consuming effort. The change will reduce survey costs, while little fishing opportunity will be lost. In addition, the Lake Koocanusa fishery runs 7-1/2 months longer than the Hungry Horse/South Fork fishery (HH/SF). This delays surveying the HH/SF fishery and greatly complicates getting accurate survey results to justify continuation of the fishery. The proposed deletion of the mandatory return of catch cards is due to the fact that compliance is poor, and we will instead conduct more timely mail surveys of anglers to get the necessary information.

CHANGE-(page 28) BLACKFOOT RIVER AND TRIBUTARIES

Mainstem and all tributaries except for the Clearwater River

- Catch-and-release for cutthroat trout
- Combined Trout: 3 daily and in possession, no rainbow trout over 12 inches, and size brown trout (see Clearwater River Drainage for exception.)
- Artificial lures only within 100-yard radius of the mouths of Belmont Creek, *Copper Creek*, Gold Creek, Monture Creek and North Fork Flathead River.

Rationale: The artificial lures only within a 100-yard radius of the mouth proposal is intended to help protect spawners exiting the Blackfoot River and is consistent with regulations at the mouths of a majority of other fluvial bull trout spawning tributaries (i.e. Gold and Belmont, Monture Creek and the North Fork) to the Blackfoot River. See individual entry for Copper Creek for the rationale for its inclusion to this list.

CHANGE-(Page 28) **CEDAR CREEK (tributary to Clark Fork River)**

- Artificial lures only, *including* within a 100-yard radius of the mouth.

Rationale: This wording change has the effect of prohibiting the use of bait over the length of Cedar Creek, not just at the mouth. This regulation change addresses protection and conservation of one of the few remaining migratory bull trout populations remaining in the middle Clark Fork region. Although the bull trout population in Cedar Creek is greatly depressed, it represents one of the three strongest remaining fluvial population in the middle Clark Fork region. Fishing pressure on this stream is low, but concentrated during the migration, staging and spawning periods (June-Sept) in the same reaches that spawning adults occupy. Bull trout are very vulnerable to anglers and particularly susceptible to intentional and unintentional capture with bait. Rates of successful release of trout caught with bait are low (about 30% mortality) relative to artificial lures (about 5% mortality) based on published literature and field observations. This regulation change is one measure considered necessary to help ensure the persistence of bull trout in the middle Clark Fork region.

CHANGE-(page 32) **CLEARWATER RIVER DRAINAGE**

Clearwater River upstream from Lake Inez Fish Barrier and *all* tributaries of Clearwater River *except the West Fork and Morrell Creek*.

- Catch-and-release for cutthroat trout
- Catch-and-release for bass
- Northern pike: no limit
- Combined trout: 3 daily and in possession, none over 12 inches
- Spearing: open for northern pike
- ***Closed to fishing from Rainy Lake Fish Barrier downstream 100 yards.***

Clearwater River from Lake Inez fish barrier downstream to Salmon Lake outlet

- Open entire year
- Catch-and-release for bass
- Northern pike: no limit
- Spearing: open for northern pike
- Snagging: open for salmon from Lake Inez Fish Barrier to Seeley Lake from September 15 through November 30. Closed to snagging from Seeley Lake to Salmon Lake
- ***Closed to fishing from Lake Inez fish barrier downstream 100 yards.***

Rationale: Fish, including bull trout and westslope cutthroat trout, congregate at the dams and are very susceptible to angling. Excessive illegal harvest has been documented in 2008 and unintentional hooking of bull trout at these dams can cause additional mortality to already severely depressed populations. Research to address what species and how many fish congregate at the dams is ongoing, but has already documented high numbers of migratory (adfluvial) native trout. Without closing fishing in these small areas angling could continue and jeopardize the populations and the research. Exceptions for the West Fork and Morrell Creek are shown under separate headings for those waterbodies.

CHANGE-(page 32) **COPPER CREEK (Tributary to Blackfoot River)**

- Catch-and-release for cutthroat trout
- Combined Trout: 3 daily and in possession, no rainbow over 12 inches, any size brown trout.
- ***Artificial lures only, including within a 100-yard radius of the mouth.***

Rationale: Increasing numbers of anglers that are accessing bull trout summer refugia, staging and spawning areas (traditionally premier fishing locations for all trout species). Bull trout are concentrated in these areas when angling pressure is highest (summer/early fall), and they are extremely vulnerable to bait angling. This is particularly the case in Copper Creek where a primary FS road allows many access sites that are available over the length of the stream. Fishing pressure on this stream is increasing and concentrated during summer during migration, staging and spawning periods (June-Sept). Bull trout are very vulnerable to bait angling. Rates of successful release of trout caught with bait are low (~70%) relative to artificial lures (~95%) based on published literature and field observations. This regulation change is one measure that may help ensure the persistence of bull trout and deal with increasing angling pressure on bull trout.

NEW-(page 32) **DUNHAM CREEK (tributary to Monture Creek, Blackfoot drainage)**

- *Catch-and-release for cutthroat trout*
- *Combined Trout: 3 daily and in possession, no rainbow over 12 inches, any size brown trout.*
- *Artificial lures only*

Rationale: This regulation change improves protection and conservation of one of the primary migratory fluvial bull trout stocks in the Blackfoot River. Although depressed, Dunham Creek represent one of the strongest remaining spawning streams in the Blackfoot Basin. Fishing pressure on this stream is increasing and concentrated during the staging and spawning periods (June-Sept). Bull trout are very vulnerable to angling pressure and particularly susceptible to bait. Rates of successful release of trout caught with bait are low relative to artificial lures based on published literature and field observations. Closure of the primary spawning reach is not considered necessary at this time.

CHANGE-(page 33) **FISH CREEK AND TRIBUTARIES** (~~tributary to Clark Fork River drainage~~)

Entire drainage

- Artificial lures only, including within 100-yard radius of mouth.

Mainstem downstream of the confluence of South and West Forks

- Catch-and-release for cutthroat trout
- Combined trout: 3 rainbow or brown trout in any combination daily and in possession, none over 15 inches
- ~~Artificial lures only within 100-yard radius of the mouth~~

West Fork of Fish Creek from Indian Creek to confluence with North Fork Fish Creek

- Closed entire year

North Fork of Fish Creek

- Closed entire year

Rationale: These changes would close two critical bull trout spawning tributaries to fishing (about 9 miles total), and also prohibit the use of bait throughout the Fish Creek drainage, not just at the mouth. These changes address protection and conservation of one of the few remaining migratory bull trout populations remaining in the middle Clark Fork region. Although greatly depressed, Fish Creek represents the strongest remaining fluvial population in the middle Clark Fork. Observations, complaints and concerns from long time residents and landowners suggest that bull trout have greatly declined in abundance and distribution within Fish Creek. Basin-wide electrofishing surveys in 1999-2005 indicate that viable spawning population now only exist in only 2 tributary reaches within Fish Creek, while historic data and angler accounts suggest that several other spawning populations existed. Fishing pressure is high on Fish Creek (mean > 2000 angler days/yr in past decade) and is concentrated in July-August in areas where fluvial bull trout are migrating and staging. Bull trout are very vulnerable to anglers and particularly susceptible to intentional and unintentional capture with bait. Rates of successful release of trout caught with bait are low relative to artificial lures based on published literature and field observations. On-site angler surveys indicate high overall regulation compliance, but there are problems with identifying fish species and a significant incidence of bait fishing.

CHANGE-(Page 35) **GOLD CREEK** (tributary to Blackfoot River)

- Catch-and-release for cutthroat trout
- Combined trout: 3 daily, no rainbow trout over 12 inches, any size brown trout
- Artificial lures only, *including* within a 100-yard radius of the mouth.

Rationale: This wording change has the effect of prohibiting the use of bait over the length of Gold Creek, not just at the mouth. The Gold Creek spawning population is greatly depressed with ≤ 3 redds in the stream in recent years. Fishing pressure appears to be heavy above Cow Creek at the spawning sites and bull trout poaching has been identified at this sites. Bull trout are very vulnerable to angling, particularly bait. Rates of successful release of trout caught with bait (about 30% mortality) are low relative to artificial lures (about 5% mortality) based on published literature and field observations. This regulation change is one measure that may help ensure the persistence of bull trout and deal with increasing angling pressure on bull trout.

NEW-(page 37) **MARSHALL CREEK** (*Tributary to West Fork Clearwater River*)

- *Artificial lures only*

Rationale: Although the bull trout population is greatly depressed, the West Fork drainage supports one of the two strongest remaining adfluvial populations in the Clearwater and Blackfoot Drainages. The adfluvial life-history is unique in this region and the West Fork is the primary source of recruitment for Alva and Inez Lakes, as well as a significant spawning area for the Seeley Lake population. Bull trout are very vulnerable to anglers and particularly susceptible to intentional and unintentional capture with bait. Because of this pressure, it is felt necessary to impose gear restrictions (artificial lures only) in Marshall Creek because rates of successful release of trout caught with bait are low relative to artificial lures.

CHANGE-(page 38) **MONTURE CREEK** (tributary to Blackfoot River)

- Catch-and-release for cutthroat trout
- Combined Trout: 3 daily and in possession, no rainbow over 12 inches, any size brown trout.
- Artificial lures only, *including* within a 100-yard radius of the mouth.

Rationale: This wording change has the effect of prohibiting the use of bait over the length of Monture Creek, not just at the mouth. This regulation change improves protection and conservation of one of the primary migratory fluvial bull trout stocks in the Blackfoot River. Fishing pressure on this stream is increasing and concentrated during the summer when in fish enter thermal refugia areas as well as during primary migration, staging and spawning periods (June-Sept). Bull trout are very vulnerable to angling pressure and particularly susceptible to bait. Rates of successful release of trout caught with bait are low relative to artificial lures based on published literature and field observations. The migration, staging, and rearing areas are most susceptible to angler-caused mortality.

NEW-(page 38) **MORRELL CREEK AND TRIBUTARIES** (*tributary to Clearwater River*)

Entire drainage

- Artificial lures only

Mainstem from Cottonwood Lakes Road bridge upstream to Pyramid Pass Road bridge

- Closed entire year

Rationale: Although the bull trout population is greatly depressed, Morrell Creek supports one of the two strongest remaining adfluvial populations in the Clearwater and Blackfoot Drainages. The adfluvial life history is unique in this region and Morrell Creek is the primary source of recruitment for Seeley and Salmon Lake populations. Fishing pressure on this stream is low, but primarily occurs during the migration, staging and spawning periods (June-Sept) in the same areas occupied by adult bull trout. Bull trout are very vulnerable to anglers and particularly susceptible to intentional and unintentional capture with bait. Rates of successful release of trout caught with bait are low relative to artificial lures based on published literature and field observations. Because of this pressure, it is felt necessary to close angling in the primary spawning area (about 5 miles total) and impose gear restrictions (artificial lures only) in the rest of the drainage. Loss of angler opportunity would be minor in the section proposed for closure as westslope cutthroat trout are the only other common trout species. Size distribution is small for cutthroat trout in this reach (nearly all < 9 inches) and similar angling opportunities are found in numerous nearby streams and other reaches of Morrell Creek. Morrell Creek lies directly adjacent to the town of Seeley Lake and the spawning section proposed for closure is very accessible (bordered on both sides by open roads). Proposed restrictions balance angling opportunity with minimal protection of a primary spawning reach for the watershed and the cumulative problem of high catch-and-release mortality.

CHANGE-(page 38) **NORTH FORK BLACKFOOT RIVER (tributary to Blackfoot River)**

Entire River

- Catch-and-release for cutthroat trout
- Combined Trout: 3 daily and in possession, no rainbow over 12 inches, any size brown trout.
- ~~Artificial lures only within 100-yard radius of the mouth.~~

Downstream of the North Fork Falls

- *Artificial lures only, including within a 100-yard radius of the mouth.*

Rationale: This wording change has the effect of prohibiting the use of bait over the length of the North Fork below the falls, not just at the mouth. This regulation change addresses protection and conservation for one of the primary migratory bull trout populations in the Blackfoot River. Increasing numbers of anglers are accessing critical bull trout recovery areas such as refugia, staging and spawning areas (traditionally premier fishing locations for all trout species). FWP personnel have made direct observations of anglers targeting bull trout. Long-time residents and landowners have made complaints and concerns that bull trout have greatly declined in abundance and distribution and are still being targeted by recreation anglers. Bull trout are concentrated when angling pressure is highest (summer/early fall) and are extremely vulnerable to bait angling. Rates of successful release of trout caught with bait are low (~70%) relative to artificial lures (~95%) based on published literature and field observations. This regulation change is one measure that would help ensure the persistence of bull trout and deal with increasing angling pressure on bull trout.

CHANGE-(page 40) **SOUTH FORK FLATHEAD RIVER DRAINAGE**

Mainstem upstream from Hungry Horse Reservoir (from Crossover Boat Ramp south and upstream to the confluence of Youngs and Danaher creeks.)

- **Bull trout: catch and release from the third Saturday in May through July 31 ~~August 15~~. A Hungry Horse/South Fork Flathead Bull Trout Catch Card must be in possession when fishing for bull trout. See Special License requirements for application information. All bull trout must be released immediately. It is unlawful to possess a live bull trout for any reason.**

Rationale: Bull trout fishing is allowed in the South Fork Flathead under a special permit from the US Fish and Wildlife Service since bull trout are listed under ESA. The permit requires conservative management that minimizes the "take" of bull trout. High water temperatures in August could result in higher than desired catch and release mortality. Drought regulations set 60 degrees F as a guideline for closing bull trout fishing. Temperature data for the South Fork Flathead indicates that threshold is reached in late July.

CHANGE -(Page 41) **THOMPSON RIVER**

Entire river

- Catch and release for cutthroat *and rainbow trout*
- ~~Combined Trout: 3 less than 10 inches or 2 less than 10 inches and 1 over 18 inches daily and in possession.~~
- Brown trout: 3 of any size
- Artificial lures only, except anglers 14 years of age and younger may use bait.

Rationale: Biologists have had several meetings with concerned anglers to discuss population trends and potential regulation changes. These changes were dropped from the 2008 regulation package to allow for more public outreach. Brown trout have increased in numbers and proportion of the fishery in recent years. This presents potential conflicts with bull trout. Rainbow trout numbers have decreased by half or more. Liberalizing the length limit on brown trout will result in increased angler harvest and bring them into better balance with the other fisheries. Making rainbows catch and release will remove some limited harvest opportunity.

New-(page 44) **WEST FORK CLEARWATER RIVER AND TRIBUTARIES**

Entire drainage

- *Artificial lures only*

West Fork Clearwater River upstream of Marshall Creek confluence

- *Closed entire year*

Rationale: Although the bull trout population is greatly depressed, the West Fork supports one of the two strongest remaining adfluvial populations in the Clearwater and Blackfoot Drainages. The adfluvial life-history is unique in this region and the West Fork is the primary source of recruitment for Alva and Inez Lakes, as well as a significant spawning area for the Seeley Lake population. Fishing pressure on this stream is low, but occurs during the migration, staging and spawning periods (June-Sept) in the same areas occupied by adult bull trout. Bull trout are very vulnerable to anglers and particularly susceptible to intentional and unintentional capture with bait. Because of this pressure, it is felt necessary to close angling in the primary spawning area (about 6 miles total) and impose gear restrictions (artificial lures only) in the rest of the drainage because rates of successful release of trout caught with bait are low relative to artificial lures. Loss of angler opportunity would be minor in the section proposed for closure as westslope cutthroat trout and brook trout are the only other common trout species. Size distribution is small for cutthroat trout and brook trout in this reach (nearly all < 9 inches) and similar angling opportunities are found in numerous nearby streams and other reaches of the West Fork.

CENTRAL DISTRICT

CHANGE-(page 59) CLARK CANYON RESERVOIR

- Burbot (ling): 3 daily and in possession, only 1 over 28 inches.
- Combined Trout: 3 daily and in possession, only 1 over 23 inches.

~~Springs entering the reservoir at its south end, near Red Rock River~~

- ~~Closed as posted.~~

Rationale: The springs conform to flowing waters season, which are normally only open to fishing from the 3rd Saturday in May to December 1st. The signs are therefore unnecessary and redundant. The simplification as proposed should eliminate any public confusion over postings and any potential entrapment issues if the signs have not been maintained or have been removed by the public. Enforcement issues over the recent past have occurred where people have argued that they were fishing legally during the closed season when closure signs were not readily observable to them.

CHANGE-(page 74) YELLOWSTONE RIVER

Yellowstone National Park Boundary to I-90 Bridge at Billings

- Open entire year
- Combined Trout: 4 brown trout and/or rainbow trout daily and in possession, only 1 over 18 inches.

~~Emigrant Bridge to Pine Creek Bridge~~

- ~~Artificial lures only, except anglers 14 years of age and younger may use bait.~~

Mouth of Clarks Fork River to I-90 Bridge at Billings

- Hook and Line: 2 lines with 2 hooks per line all year

Rationale: Survey data shows that harvest on the Yellowstone is very low. This change would allow the few anglers that do harvest (and use bait) an additional location to fish. Numerous anglers have made this request. This deletion would also provide for standardization of regulations for a large stretch of the Yellowstone River.

EASTERN DISTRICT

CHANGE-(page 83) **General Paddlefish Regulations for ALL areas.**

- Clarify the hook size restriction for snagging paddlefish..

Rationale: The hook size restriction implemented during the 2008 paddlefish season was very successful. Anglers complied with the new rule and less damage to fish was observed. The only confusion arose from the written description and the picture not being the same. Retailers are now ordering 8/0 hooks and all that are available for purchase fit within our required rules. Even with a variance of size between 8/0 hooks produced by the various manufacturers, the written description of 8/0 or smaller is adequate. No picture is needed and it will be removed from the regulation booklet.

CHANGE-(page 83) **Page 83. General Paddlefish Regulations all areas**

Missouri River Downstream from Fort Peck Dam and the Yellowstone River

The paddlefish fishery is managed under a harvest target in conjunction with North Dakota. Montana has set regulations so that annual harvest will not exceed 1000 fish. FWP may close the season within 24 hours notice in any year if it appears that the harvest target may be exceeded, and/or immediately at the Intake FAS (Intake Diversion downstream to Cottonwood Creek) when 800 paddlefish have been ~~harvested~~ **processed** at Intake. Call the Miles City FWP office at 406-234-0900 for current information on harvest status.

Rationale: The total harvest of paddlefish exceeded the 1000 fish target during the 2008 season due to the above listed wording. Fish harvested from areas downstream of Intake were not included in the total fish processed at the Intake caviar station, which allowed the total harvest and total processed fish to exceed the 800 fish limit. Changing the word "harvested" to "processed" will eliminate this confusion and will allow the fish manager to close the season once 800 fish have been processed through the caviar station regardless of where they were captured. This will allow the fish manager to close the paddlefish season without exceeding the total population target.

CORRECTION TO PROPOSED TENTATIVE FISHING REGULATION CHANGES IN EASTERN DISTRICT

CHANGE-(page 83)

Page 83. General Paddlefish Regulations all areas

Missouri River Downstream from Fort Peck Dam and the Yellowstone River

The paddlefish fishery is managed under a harvest target in conjunction with North Dakota. Montana has set regulations so that annual harvest will not exceed 1000 fish. FWP may close the season within 24 hours notice in any year if it appears that the harvest target may be exceeded, and/or immediately at the Intake FAS (Intake Diversion downstream to Cottonwood Creek) when *it is estimated the target has been reached*. ~~800 paddlefish have been harvested, processed at Intake.~~ Call the Miles City FWP office at 406-234-0900 for current information on harvest status.

Rationale: The total harvest of paddlefish exceeded the 1000 fish target during the 2008 season due to the above listed wording. Fish harvested from areas downstream of Intake were not included in the tally of total fish processed at the Intake caviar station (as intended), which allowed the total harvest and total processed fish to exceed the 800 fish limit. The new suggested language will allow the fish manager to close the paddlefish season before reaching 1,000 fish before the season is closed.

CHANGE-(page 88)

YELLOWSTONE RIVER

Downstream from the mouth of the Bighorn River, not including Intake Fishing Access Site.

~~Catch and release snagging for paddlefish is not permitted.~~ ***Catch and release snagging for paddlefish is allowed ONLY at the Intake FAS – See Intake Fishing Access Site below. Catch and release of paddlefish is not permitted on any other reach of the Yellowstone River or Missouri River below Fort Peck Dam.***

- Snagging: It is illegal to snag for fish, other than paddlefish, downstream from the mouth of the Bighorn River on the Yellowstone River, or downstream from Fort Peck Dam on the Missouri.
- Paddlefish Snagging: ~~Open~~ ***Tuesdays, Wednesdays, Fridays, and Saturdays***, May 15 through June 30 from 6 AM to 9 PM, MST, ~~daily~~ unless closed to harvest earlier by FWP. An unused yellow paddlefish tag is required to fish for paddlefish. The tag must be properly placed on the first paddlefish caught and landed. See Eastern District Standard Regulations for additional important information.

Rationale: Some confusion existed during the 2008 paddlefish season with catch and release regulations. The above correction will help clarify that the only catch and release allowed on the Yellowstone and lower Missouri rivers occurs only at the Intake FAS site. A listing of the days an angler can harvest a paddlefish was inadvertently left out of the Yellowstone River Downstream of the Bighorn section of the 2008 regulations. This led to confusion for anglers who thought they could harvest a paddlefish any day (daily) of the week. This language is found in the Missouri – Downstream from Fort Peck- but was lost in the Yellowstone section. Replacing this language will clarify that harvest is on specific days on the entire Yellowstone River below the Bighorn.

Vermillion stated that he had asked the Region about changing the catch and release regulations on the Boulder River above the natural bridge and below the ranger station due to calls he had received from concerned landowners, anglers, and other folks in the Boulder Valley, and was told these kinds of changes were not done in the “off-years”. He asked if this is Department policy or an administrative rule that stipulates that changes are only made every four years.

Skaar replied that it is a policy that was approved by the previous Commission to make the major changes only every four years. He said he had adhered to the policy this year because comments had not been solicited and it would be arbitrary to just make changes that someone called in about.

Vermillion said after observing that stretch of river over the last year, he noticed more fishing pressure than he had seen in many years, partly due to the lower portion of the river being closed. That stretch of river is critical spawning habitat, and is some of the finest trout fishing on the entire river. It would be prudent to entertain as a tentative the possibility of reinstating catch and release on that portion of the river.

Jim Darling said he also received calls, but mainly from landowners. When the Department dealt with the regulation process the last time, 85% of the 300 anglers he contacted were in favor of the change. The landowners were not excluded, however they were not targeted. He plans to meet with them August 29. He had asked for the change because sampling indicated that the Boulder fish populations

are increasing. Also, the ranch ownership changed from a dude ranch that brought a lot of pressure, to a private holding. The combination of lower pressure, and fish populations in this section and other parts of the river are high. The new regulation represents a change from catch and release to allowing harvest of one brown trout or rainbow trout.

Vermillion asked that after meeting with the landowners on August 29, if that information can be brought back to the Commission for change in February.

Darling replied that yes he can bring information back to the Commission. He said he has a concern about raising this issue again because the ranch has a history, but not by the present owner, of attempting to exclude the public by seeking to purchase the adjacent Forest Service land and by harassing anglers. The current owners desire a quiet retreat.

Workman asked how long bull trout catch cards have been in effect and how many are given out each year. Skaar said this is the fourth year, and that approximately 2,500 are given out per year. Workman asked if they still have to be returned or if this just changes them from 2008 to 2009. Skaar said the cards do not have to be returned.

Jim Vashro said that the mandatory return has been sporadic, receiving only about 25% back, so the Department has increasingly reverted to a mail survey as well, which confuses the anglers, so it seems most effective to conduct a mail survey only.

Vermillion asked Brad Schmitz if there will be good paddlefish spawning this year due to high water.

Schmitz said the conditions are better than in the last ten years, but they won't know for another week or so when survey results are finalized.

Action: Workman moved and Colton seconded the motion to approve the proposed tentative regulation changes for the 2009 fishing season.

Chairman Doherty asked for public comment. There was none.

Action on Motion: Motion carried.

6. Lower Big Hawk Lake Emergency Regulations – Final. Chris Hunter, FWP Fisheries Division Administrator, explained that Lower Big Hawk Lake is scheduled for treatment in September as part of the South Fork Westslope Cutthroat Trout Project to remove non-native trout. The proposal is to remove the regulations and allow anglers unlimited harvest prior to treatment, effective immediately.

Director Hagener stated that this action has been discussed over the last few years, and following the last Commission meeting he was approached by members of the public about doing this very thing. The FWP Legal Unit confirmed that it would be an appropriate action since the fish will be killed anyway. In the future, the public will be informed in advance if additional lakes are to be handled in the same manner.

Action: Workman moved and Vermillion seconded the motion to adopt the department's proposal to lift the fishing regulations on Lower Big Hawk Lake and allow unrestricted harvest of cutthroat trout from the time of this action through September 20, 2008.

Chairman Doherty asked for public comment. There was none.

Action on Motion: Motion carried.

7. North Chamberlain Creek Easement in Powel and Missoula Counties – Endorsement. Chris Hunter, FWP Fisheries Division Administrator, explained that this proposed 14,470-acre easement is located near Ovando. The land was owned by Plum Creek Timber Company, and was recently purchased by The Nature Conservancy as part of the Blackfoot Community Project in cooperation with the Blackfoot Challenge. The Nature Conservancy proposes to sell the land to the Department of Natural Resources and Conservation encumbered with a conservation easement to be held by FWP in perpetuity, and DNRC would manage the lands to benefit State Trusts and the general public. The purchase price of the conservation easement will be below current appraised market value, and funding would come from the federal Habitat Conservation Program grant previously awarded to FWP.

Action: Vermillion moved and Workman seconded the motion to endorse the Department's proposal to cooperate with TNC and DNRC to negotiate conservation easement terms, and for FWP to begin the public involvement process.

Chairman Doherty asked for public comment. There was none.

Action on Motion: Motion carried.

8. Inghams/Foys Bend Property Acquisition on the Flathead River – Endorsement. Chris Hunter, FWP Fisheries Division Administrator, requested that this endorsement be postponed to a future meeting after Region 1 has had sufficient opportunity to discuss it further with Commissioner Workman. The Commission unanimously agreed to the request.

9. Old Harper's Bridge Fishing Access Site Acquisition near Missoula – Final. Joe Maurier, FWP Parks Division Administrator, explained that this acquisition of 12.34 acres along the Clark Fork River is located four miles downstream from the Kona Bridge FAS, and twenty miles upstream from the Petty Creek FAS. It would provide much needed access to the Clark Fork River. FWP would purchase 8.43 acres at a cost of approximately \$63,000, and accept a donated 3.91 acres. Future development of this site would include an access road, a parking area, a latrine, and a boat ramp. Public comments were all in support of the proposal.

Action: Workman moved and Colton seconded the motion to authorize the Department to accept the east bank 3.91-acre land donation, and purchase the west bank 8.43-acre property at the agreed upon value. Motion carried.

10. Charlie Lincoln Ranch Acquisition – Update. The 7,540-acre Lincoln Ranch is located eight miles southwest of Shelby and 70 miles northwest of Great Falls in Toole and Pondera Counties and straddles 14 miles of the Marias River. The Will of Charlie Lincoln granted Montana Fish Wildlife & Parks the right of first refusal. If FWP acquires the Lincoln Ranch, it would be managed as a combined State Park and Wildlife Management Area.

Director Hagener stated that the estate accepted a \$7.6 million dollar bid from Charlie Lincoln's nephew, Rod Lincoln, who resides in Florida. The attorney for the estate will send notification and the official bid to FWP for Department consideration as to whether or not to meet that bid. Once notification is received, FWP has thirty days to accept the offer. After acceptance, FWP will have additional time to close on the property. Rod Lincoln has also expressed interest in entering into a partnership with FWP.

Vermillion asked if the Will was specific about rejecting bids to then solicit higher bids.

Hagener replied that the Will was not that specific, but the bid solicitation package stipulated that they reserved the right to reject any and all bids.

Colton asked if procedurally they can they make that stipulation.

Bob Lane, FWP Attorney, replied that it could be argued whether or not it meets the terms of the Will, but it would probably be upheld by the Courts.

Doherty inquired as to Rod Lincoln's interest in the ranch. Hagener replied that Lincoln remembers it as a cherished time of riding horses, etc. when he was young, and he wants to keep it as it is with few changes. Hagener stated that an adjacent 4,500-acre property has recently come up for sale at a lesser price.

11. 2008 Early Season Migratory Bird Regulations – Final. Jeff Herbert, FWP Wildlife Division Assistant Administrator, discussed the recommended proposal. No public comment was received. No changes were proposed to the adopted tentative regulations.

Propose to expand special permit season dates for Rocky Mountain Population of Sandhill Cranes to September 6 – September 21.

Propose to move later the season dates for Mid-continent Sandhill Cranes to September 27 – November 23.

Propose to allocate each successful applicant two crane permits for Dillon/Twin Bridges/Cardwell and Wheatland/Meagher/and portion of Sweetgrass Counties.

Action: Colton moved and Doll seconded the motion to adopt as Final the 2008 Early Season Migratory Bird Seasons as proposed by the Department. Motion carried.

12. 2008 Late Season Waterfowl Seasons/Closure – Tentative. Jeff Herbert, FWP Wildlife Division Assistant Administrator, presented the proposal. Federal frameworks are established with the assistance of flyway councils, with Montana participating in both the Central and Pacific flyways. FWP retains the option to be more restrictive but not more liberal. He briefed the Commission on populations and pond conditions, saying that there has been a decline in pond numbers in prairie Canada, and in the north central United States.

Action: Colton moved and Vermillion seconded the motion to adopt as Tentative the late season migratory bird seasons as proposed by the Department with the amendment to add a 5 dark goose bag limit in the Central Flyway. Motion carried.

13. Selection of Organizations to Auction Moose, Sheep, Goat, Deer & Elk Licenses – Final. Quentin Kujala, FWP Wildlife Division Management Bureau Chief, stated that applications for the auction licenses had been received. FWP does not make recommendations as to who should receive the licenses.

The Wild Sheep Foundation (formerly Foundation for North American Wild Sheep) applied for the moose, sheep, and goat licenses, the Mule Deer Foundation applied for the mule deer license, the Rocky Mountain Elk Foundation applied for the elk and moose licenses, and the Grand Slam Club Ovis applied for the sheep license.

Action: Colton moved and Vermillion seconded the motion to award the 2009 Sheep and Mountain Goat licenses to the Wild Sheep Foundation, the 2009 Mule Deer license to the Mule Deer Foundation, and the 2009 Elk and Moose licenses to the Rocky Mountain Elk Foundation.

Chairman Doherty asked for public comment.

Jim Weatherly, FNAWS, urged the Commission to approve awarding the sheep and goat licenses to the Wild Sheep Foundation because of their good track record. They hope to continue that tradition.

Neil Thagrad, FNAWS, now the Wild Sheep Foundation, said their history with permits has generated \$7 million in the past. They are very actively involved with federal level policy maker, and they appreciate the Commission's support.

Action on Motion: Motion carried.

14. 2008 Bison Seasons, HDs and Quotas – Final. Quentin Kujala, FWP Wildlife Division Management Bureau Chief, stated that there are no proposed changes to the approved tentative regulations. Over 200 comments were received ranging from support of the proposal to concerns regarding genetic diversity and disease issues, to opposition to general management and season detail, to opposition to hunters, and to concerns relative to fair chase. The changes from the 2007 regulations are to:

Implement only one cow/calf hunter list in each of Hunting Districts 385 and 395.

Eliminate requirement for hunter to take orientation test. Education DVD still provided

Action: Colton moved and Vermillion seconded the motion to adopt the final 2008 Bison regulations and quotas as proposed by the Department.

Doherty asked if the bison population is getting to a point that genetics need to be looked into to maintain the herd.

Kurt Alt, FWP Region 3 Wildlife Manager, said there are two genetically distinct populations in the Yellowstone herds. Further exploration is continuing, but input from Yellowstone National Park maintains that genetics are not impacted. A large scale removal of bison would cause impacts, but the season quotas will not.

Action on Motion: Motion carried.

15. 2008 Furbearer Seasons and Quotas – Final. Quentin Kujala, FWP Wildlife Division Management Bureau Chief, presented the furbearer proposals. He stated that FWP received many public comments, particularly in opposition to wolverine trapping for a variety of reasons. Additional comments centered around setbacks, mandatory trap checks, and 48-hour reporting of dogs caught in traps.

Proposed changes to adopted Tentatives are in strike-through and **bold**.

DEFINITIONS

Ground Set – adjust height from 36 to 48 inches

Other Sets – adjust height from 36 to 48 inches

GENERAL TRAPPING REGULATIONS

Snares – Add: *Relaxing snares are allowed.* (clarification)

Change TD boundary between TD 3 and TD 5 along a portion of the Yellowstone River to match regional boundaries for regulation and enforcement purposes.

Add mandatory reporting language for accidental captures of dogs: “To improve understanding of accidental dog captures in traps or snares trappers must report such captures to the nearest FWP regional office within 48 hours.”

FURBEARER REGULATIONS

Ground Sets Along Public Roads *and Highways* (clarification) - Add: *and snares* – Remove: publicly owned and maintained road. Definition of a publicly owned and maintained road: A road owned by a subdivision of the government, including city, county, state or federal government and maintained by the government for year-round, legal car and light truck traffic.

Body-Gripping Ground Sets – Change To: *Public Land Ground Sets* (clarification) – Add: *on federal and state lands* (clarification)

Public Land Roads and Trails – Add: *from the edge of* (clarification)

Public Trailheads – Change To: *Public Land Trailheads* – ~~Change Distance from 300 feet to 1000 feet~~ **Restrict killing groundsets and killing snares from 300 to 1000 feet; maintain current language for 0 – 300 feet**

Public Campgrounds – Change To: *Public Land Campgrounds*

R2 Furbearer Trapping Closure Areas – Designated USFS Recreation Areas: Blue Mountain, Rattlesnake, and Pattee Canyon

FURBEARER SEASONS

Wolverine – ~~Modify WMU boundary between WMU 2 and WMU 3~~ **Further modify tentative WMU boundaries into 4 WMUs.**

Adjust WMU Quotas –

WMU 1 (North Core) ~~Total quota 4 wolverine. Female subquota of 1 in TD 1 portion, female subquota of 1 in TD 2 portion, and female subquota of 1 in TD 4 portion. Female subquota will close season in TD portions of WMU 1.~~ **Total quota of 3 wolverine. Female subquota of 1.**

WMU 2 (Central Core) ~~Total quota 3 wolverine. Female subquota of 1 in WMU 2.~~ **Total quota of 1 wolverine.**

WMU 3 (South Core) ~~Total quota 2 wolverine. Female subquota of 1 in WMU 3.~~ **Total quota of 1 wolverine.**

WMU 4 (Insular) **Total quota of 0 wolverine.**

~~No skull return for bobcat and marten.~~ **Charge On Delivery (COD) return for bobcat skulls. No marten skull collection.** Skull return will continue for otter, fisher, and wolverine.

Bobcat - Increase quota in R6 from 100 to 125; Increase quota in R7 from 700 to 800.

Bobcat – Additional restrictions to protect lynx from incidental capture: Define those portions of Trapping Districts 1 and 2 that overlap core lynx habitat. ~~Ground set traps for bobcat in this area must have a inside jaw spread size of 5 3/8 inches or less and snare cables must be at least 5/64 inch in diameter with inside loop size no smaller than 8 inches.~~ **No killing snares in bobcat sets in defined area.**

Additional restrictions to protect lynx from incidental capture: Define those portions of Trapping Districts 1 and 2 that overlap core lynx habitat (same as above). All pole sets in this area must have a pole diameter no larger than ~~6~~ **4** inches with trap placed at least 48 inches above the ground

Add: Trail Creek Beaver Management Area in TD 3 (special regulations).

Kujala clarified that no killing groundsets or killing snares are allowed from 0 feet to 1,000 feet.

Doll asked for a definition of a trail and a trailhead, and asked if trails that are not maintained but are numbered are included. Kujala replied that trails are identified by numbers, or are public land trails, or system trails, and trailheads are the beginning of those marked system trails. Yes, un-maintained but numbered or recognized trails are part of the signed system trails.

Doherty asked how many fishers are in Montana. Kujala replied that it is unknown.

Colton asked for clarification that setbacks changes are at trailheads. Kujala replied to the affirmative.

Action: Vermillion moved and Colton seconded the motion to adopt the final trapping regulations and furbearer seasons and quotas as recommended by the Department, with exception to the wolverines, which will be handled as a separate action.

Chairman Doherty asked for public comment on the changes to the tentatives.

David Gaillard, Defenders of Wildlife, supports the ban on killing groundsets and snares and the additional restrictions to help protect lynx from incidental take.

Dennis Schutz, Montana Trappers Association, thought that somewhere in the proposal was a requirement that trappers must check their traps every 48-hours. Kujala clarified that the 48-hour regulation is for reporting dogs caught in traps.

Bob Sheppard, Montana Trappers Association, asked if he needs to report if his hounds get caught when they go trapping with him. He suggested that measuring should begin at the center of the trail and not from the edges.

Colton replied that reporting is mandatory if someone else's dog gets caught in a trap.

Kujala replied that the primary motivation behind the regulation is to expand the understanding and knowledge of how many, and what kind of captures are taking place - to collect data.

Don Bothwell, Montana Furbearer Conservation Alliance, said it should be unlawful for a dog to run at large – that is a Flathead County regulation. If he traps a dog, that makes him responsible for it. If he reports the capture, he is incriminating himself. He is in favor of signage to pet owners on public lands, but is opposed to trappers signing where traps are. He complained that he has had things stolen from him. Trappers should not have to advertise where their traps are.

Dave Wallace, Montana Trappers Association, said since trappers are allowed to use lethal body gripping body sets but not lethal snares, why not allow snares since body grippers are lethal as well.

Kujala said there are to be no killing ground sets or lethal snares on trailhead setbacks. From zero feet to 300 feet there are to be no ground sets, and from zero feet to 1,000 feet, there are to be no killing snares or killing ground sets.

Melisaa Tuemhler, said it is disheartening to her to put restrictions on trappers. She does not like the 1,000 foot setback. There are no trapping problems that require major changes.

Chris Barnes, Lolo, appreciates the struggle of the Commission on this issue. He feels it is appropriate to designate an area where people can safely recreate with dogs, however the proposed areas are not particularly beneficial to dog owners. The Rattlesnake Recreation area, Blue Mountain area, and the Pattee Canyon areas are closed to dogs in the winter even when on a leash, so he requested the Commission think about closing areas that will benefit dog owners. He stated in reply to Bothwell's statement, that dogs do not have to be contained in the forest in Flathead County.

Doll said the setback is not applicable in eastern Montana, and Workman said some of the topography around trailheads is so steep that 1,000 feet might as well be 3 miles.

Mike Thompson, FWP Region 2 Wildlife Manager, said the whole entirety of Blue Mountain, Rattlesnake, and Pattee Canyon is not closed to dogs. Trapping is going on during other times than dog closure time. The purpose of this recommendation was to direct the public to places where trappers didn't desire to go.

Doherty stated that he is concerned about fishers, and not knowing how many are out there. The notion of science that "we've done it for years so it must be ok because they are not extinct yet" is not acceptable. He said if we don't know how many there are and still say we can kill 5, and it is unknown how many are killed from other sources, it is troublesome. It is especially disconcerting when the possibility exists that we can be looking at listing them under the Endangered Species Act.

Action on Motion: Motion carried. Four in favor – one opposed. (Doherty opposed).

Workman said extending the setback to 1,000 feet makes no sense to him, and the likelihood of getting any dog reports is none.

Action: Workman moved and Doll seconded the motion to leave the setback at 300-feet, and not extend it to 1,000 feet.

Kujala clarified that this would apply to all setbacks on furbearer regulations, however non-game predators such as fox and coyotes are not included.

Chairman Doherty asked for public comment on Workman's motion.

Terry Gloyer, Missoula, asked if the Commission is saying that for coyote trapping there is no setback from trails and trailheads. Kujala replied yes.

Action on Motion: Motion failed. Two in favor – three opposed. (Doherty, Vermillion, and Colton opposed).

Action: Vermillion repeated his motion, seconded by Colton, to approve the final trapping regulations and furbearer seasons and quotas as recommended by the Department, including the 1,000-foot setback. (Wolverines will be handled as a separate action). Motion carried. Four in favor – one opposed. (Doll opposed).

Action: Workman moved and Doll seconded the motion to remove the 48-hour reporting of dog captures from the regulations.

Vermillion stated that some trappers feel it is not their responsibility to report a dog caught in a trap, however reporting would provide the data that shows whether or not the reporting period is needed. It is not that much of an imposition.

Action on motion: Motion failed. Two in favor – three opposed. (Doherty, Vermillion, and Colton opposed). Mandatory 48-hour reporting of dog captures remains in the regulations.

Action: Doherty moved and Colton seconded the motion to approve the final trapping regulations and furbearer seasons and quotas as recommended by the Department, which includes mandatory 48-hour reporting of dog captures (and the 1,000-foot setback).

Doll asked how enforcement can handle it if someone just says they are trapping fox.

Kropp said it has been this way for many years, there is nothing different, no change. The burden of proof is on FWP, and the complexities of all of this on a game warden are stringent.

Colton said it is not that much of an imposition to report, and if trappers want to claim they are trapping fox when they are not, there is not much that can be done. There needs to be cooperation.

Action on Motion: Motion carried. Three in favor- two opposed. (Doll and Workman opposed).

Wolverines

Jeff Herbert, FWP Wildlife Division Assistant Administrator, briefed the Commission on the proposed regulations. He said wolverines are rare, and caution is required, and it is difficult to impose a harvest rate on only 200 animals. The intent is to provide limited, but highly valued, trapping opportunities. A great deal of discussion and research has gone into these proposals.

Action: Vermillion moved and Workman seconded the motion to adopt Option A creating four wolverine management units in Montana, with Unit 1 having a quota of 3 with a female subquota of 1, Unit 4 having a quota of 0, Unit 2 having a quota of 1, and Unit 3 having a quota of 1.

Vermillion said the Department has put a lot of work into the development of the management plan. It is a fresh approach. His primary concern is relative to the insular mountain ranges where wolverines may exist in small populations where trapping could impact them significantly. By addressing these mountain ranges where wolverines are isolated and moving between core habitats, the Department has taken a good approach.

Colton concurred with Vermillion, and said anytime there is advocacy on both sides of the issue, nobody will get exactly what they want. This is a reasonable compromise.

Workman asked how many overrides there have been in the last couple of years. Kujala said none in the last two years.

Chairman Doherty asked for public comment on changes.

Bob Sheppard suggested paying attention to biological studies and scientific research. There may be some validity to overrun, but there is concern in the trapping community that they may be shut off. MTA has made a stand that they will support the department on their choices.

Brian Stoner, MTA, said he supports the work of FWP in general, except for the live captures for transplant to other states - keep the animals in Montana. Relocation numbers should not count against quota numbers proposed. Double the unit quotas.

Lisa Upson, Natural Resource Council, stated that she appreciates the quota reductions but is still opposed to trapping wolverines. Trapping benefits so few people. She urged the Commission to totally withdraw the season.

David Gaillard, Defenders of Wildlife, commended FWP for the changes made to the trapping of wolverines. Those changes should help reduce the risk of losing the wolverine population, however as long as trapping exists, there still is a risk. Trapping should be stopped. They prefer Option B. The benefits of trapping do not outweigh the dangers of trapping.

Mary Ellen Schnurr said she knows two people who accidentally trapped wolverines. She asked what they should do when that happens - should they turn them loose?

Jeff Herbert replied that yes, they should turn them loose.

Jeff Hull said he knows the Commissioners have jobs, families, careers, and interests so they don't have time to find out all of the information available to them. He quoted from an article that stated that five hundred pairs of animals is what is needed to maintain the genetics of a species, and fifty pairs is what is needed to maintain genetic diversity. Montana has only thirty-eight. He feels that harvesting six animals will impact the species. He asked the Commission to put off the decision until they have heard all of the data.

Don Bothwell said when they heard of Option A, they were riled up - from a quota of 10 to 5 is dramatic. They have looked at it as a pinnacle of trapping to trap a wolverine. This is a no-win proposition for him, but he will accept Option A. His group would help with live captures for relocation.

Tom Kuglin, MTA, said we are managing Idaho and Canadian wolverines and not just Montana's. He asked why not make them a big game animal.

Doherty said he appreciates the Department looking at the tentatives for consideration of the final recommendations. Utilizing the isolated mountain ranges is a marked improvement. He understands the notion of getting the biggest and the best. He worries about the numbers, and the ability of the population to maintain itself in Montana. He is not against a small take of a rare resource, but he wants to ensure that they do not become an endangered species. Given that he is unsure about the science, he is not ready to vote for Option A.

Colton asked how live trapping and relocation will be handled. Kujala said the Department will communicate with the Commission to determine if it should come from the quota or not. The Department will coordinate efforts between trappers, the Department, and the Commission.

Action on motion: Motion carried. Four in favor – one opposed. (Doherty opposed).

Action: Vermillion moved and Workman seconded the motion that Montana wolverines must be relocated within Montana before they are relocated outside of Montana. Motion carried.

16. Cornwell Ranch Conservation Easement – Informational Update. Director Hagener said all of the issues raised by DNRC regarding this easement have not been entirely resolved, but he wished to keep the Commission apprised of the situation as the process proceeds.

Ken McDonald, FWP Wildlife Division Administrator, briefed the Commission on the five issues of concern by Mary Sexton of DNRC, and two concerns from individuals.

1st issue – Isolated State Land Parcels. There are four state school trust parcels on west side of the Cornwell project area that are currently leased by the Cornwells that DNRC was concerned would be subject to land banking rules that require compelling reasons for selling parcels that are wholly surrounded by public lands or by conservation easements. DNRC requests that the Cornwells purchase these parcels, or that FWP purchase conservation easements on these parcels. The Cornwells applied to purchase them at an estimated price of between \$600,000 and \$1.2 million which will be determined by an appraisal, and have given their word to put money into escrow to assure the purchase would go through. FWP has a concern that the rationale for the purchase requirement is based on the premise that these parcels are wholly surrounded by the conservation easement, but none of the four parcels are more than 50% adjacent to deeded Cornwell land, so they are definitely not wholly surrounded by the easement.

2nd issue – State Lands (DNRC) Block. A 30,000-acre block of school trust land that borders the Cornwell ranch to the east is leased by the Cornwells under five DNRC leases, and was included in the grazing plan of this proposal. The Cornwells addressed the concerns expressed by DNRC in draft supplemental lease agreements. DNRC says they have not had time to review the supplement agreements, so the Cornwells and FWP developed an agreement to withdraw that block from the grazing plan, and the water development has been reconfigured. Removal of that block of land eliminates the issue of the conservation easement affecting state lands.

3rd issue – Potential Impact of Energy Development on State Lands (Oil and Gas). The Cornwell easement provides for limited-impact mineral and oil and gas development. Additionally, the easement cannot restrict mineral rights held by any third parties. DNRC was worried the easement might diminish their ability to develop energy facilities for hydrocarbon resources on their lands in the area. The Cornwell conservation easement does not affect DNRC or any third parties. Within the easement it is stipulated that the landowners can authorize third parties to construct roads across their deeded property for mineral development, subject to FWP approval, which includes DNRC.

4th issue – Wind Energy Development on State Lands. Assessments identified a portion of DNRC land on the east side of the Cornwell Ranch, and a 640-acre parcel of actual Cornwell land as having good potential for wind energy development. DNRC expressed concerns that the easement would prohibit wind energy development on the Ranch, thus affecting DNRC's wind energy development. FWP included the provision in the easement to allow the Cornwells the ability to develop wind energy on their 640-acre section and to allow erection of transmission lines toward this effort, which DNRC can also take advantage of. DNRC retains their rights to develop wind energy resources on DNRC land.

5th issue – Management of State School Trust Lands. The Cornwell Ranch holds several grazing leases on school trust land. DNRC is concerned that the conservation easement would inhibit their ability to manage the lands in a manner that that generates revenue for the trust beneficiaries. The FWP/Cornwell easement only applies to their approximately 24,000 acres of deeded land. FWP cannot and does not desire to manage DNRC lands. The grazing management plan was modified to exclude the DNRC lands.

6th issue – Valuation and Appraisal. Comments were received from the public who felt the appraisal was too high. Clark Wheeler of the Bozeman-based appraisal firm, Wheeler and Associates, conducted the appraisal to yellow book standards. Wheeler is known as one of the country's most qualified and experienced appraisers in ranch conservation easements. Appraiser Dave Heine of Kalispell reviewed the appraisal. The value of the 24,031-acre ranch, without improvements, was determined to be \$11,275,000, and after the 45% reduction in value due to the conservation easement, the total came to \$5,075,000. An agreement of \$5,050,000 was reached.

7th issue – Public Recreational Access. Since the original agreement was drafted, the Cornwells have increased the number of hunter days to 2,000, and the fishing days to 250. The original numbers were suggested by FWP, and not by the Cornwells. It is anticipated that the Ranch will provide more days of use than these numbers because the public will have open access to the private and public land under the Cornwell's management.

Clark Wheeler, NC Wheeler & Associates, explained that this valuation was complicated because of the five different ownership entities involved. Evaluation of this fragmented property required use of a cost approach analysis in which he assigned various land values to different classes of land. The highest valuation was recreation land at \$2,600 per acre. The lowest value was \$175 per acre for agricultural rangeland. He looked at twenty-five sales in the area for values, which is standard appraisal procedure. There were varying values in the first four land categories from \$1,250 to \$2,600 per acre. Within the Cornwell Ranch that entailed 3,247 acres at a value of \$5,437,100, reflecting an average value of \$1,674 per acre. He looked at twelve sales with those types of land components. Those twelve sales averaged \$1,741 per acre, which is approximately \$80 higher than what he concluded. The last two categories include 16,000 acres of recreational rangeland and native rangeland, ranging from \$175 for native grass to \$300 for rangeland, averaging \$223 per acre. The twelve comparable sales of rangeland encompassed 70,000 acres, averaging \$221 per acre, so his valuation is within \$2 of the average sales. This appraisal establishes a before-value, and an estimated value once the conservation easement is placed on it. He used a percentage discount analysis based on sales in eastern Montana relative to big properties placed on conservation easements. This easement steps into a realm that is beyond what is considered typical in that it allows substantial public access. Recreational property sells at a higher price, which affects the price of property that is used for agricultural purposes.

Doll asked Wheeler how many acres it takes to run a cow year round. Wheeler said 5-6 acres, making an Animal Unit worth \$12,000. Doll said this will put ranchers out of business. Wheeler said he feels there will be no cattle ranches left in Montana during his children's lifetime.

Doherty asked Wheeler how confident he was in his analysis - will it hold up?

Wheeler replied that he makes his money with sound valuations. His values are considered insurable. This is market value. Interpretation on the 582 acres along the river that adjoins Highway 2 resulted in classifying part of it as agriculture and part as recreational.

Doherty asked how many acres held higher value. Wheeler replied 1,021 acres.

Vermillion asked if comparable sales in this region are mostly recreation. Wheeler said sales are influenced by a lot of 1031 trades and recreation sales. As you move from the water and recreation areas, the value goes back to agriculture.

Lee Cornwell said the outbuildings were excluded as they are calf wintering systems and are domiciles to family members. The family did not want to have to get permission to make improvements.

Doll asked what the overall value would be if sold as a ranch. Wheeler said the market value should remain the same, but he did not evaluate it as a ranch, so did not have a definitive figure.

Mary Sexton, DNRC, said the grazing management plan is the largest block, and she thinks that the supplemental lease agreement withdrawal was wise. It is not wholly surrounded, but they have concerns that as easements develop across the state, state lands will be impacted. It is not a requirement that these parcels be purchased. There are two isolated parcels that can be purchased by the Cornwells, but if they don't, DNRC still wants access to them. Traditional use of state trust land is important.

17. Wolf Management Administrative Rules and Annual Quotas – Final. Ken McDonald, FWP Wildlife Division Administrator, stated that wolves were removed from the threatened list. In June, the Commission approved a tentative quota of 75 wolves, and formal rulemaking was directed. On June 18, the federal court reinstated protection on wolves. Management authority has gone back to the USFWS under the Endangered Species Act. FWP recommends that action be suspended on setting harvest quota.

FWP still wishes to adopt administrative rules with the caveat that they become effective upon delisting. Since the injunction was granted, the pressure has been alleviated. Many comments were received on the wolf proposal, and the Department would like more time to go through those.

Colton moved and Workman seconded the motion that the Commission suspend action on a 2008 harvest quota, and to delay adoption of the proposed ARM rules that reclassify the wolf to a species in need of management and direct conflict management. Motion carried.

18. Open Microphone – Public Opportunity to Address Additional FWP Issues. There was none.

Meeting adjourned at 1:55 p.m.

Immediately following the meeting, an Executive Session was held with Department attorneys to discuss the Wolf Litigation Strategy.